

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Squad #4	CCRB Case #: 201412352	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 12/11/2014 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 6/11/2016	EO SOL 6/11/2016	
Date/Time CV Reported Fri, 12/12/2014 11:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/12/2014 11:37 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Paul Mallilo	13679	949246	071 PCT
2. SGT Abraham Badillo	00568	936162	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Antoine Gilkes	09869	950494	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Paul Mallilo	Abuse: PO Paul Mallilo entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Paul Mallilo	Force: PO Paul Mallilo used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Abraham Badillo	Abuse: Sgt. Abraham Badillo authorized the arrest of § 87(2)(b)	§ 87(2)(b)

Case Summary

Around 10:50 p.m. on December 11, 2014, § 87(2)(b) was on the first floor of § 87(2)(b) checking water damage to the back door with a flashlight. § 87(2)(b)'s uncle and family friend own the building. § 87(2)(b) lives with his parents § 87(2)(b) and § 87(2)(b) on the second floor, and they use the vacant first-floor for storage. At this time, the 71st Precinct Anti-Crime Team consisting of Sgt. Abraham Badillo, PO Antoine Gilkes, and PO Paul Mallilo observed § 87(2)(b)'s flashlight moving in the dark, vacant apartment, and suspected a burglary in progress.

While Sgt. Badillo and PO Gilkes went next door to speak with the neighbors, PO Mallilo made contact with § 87(2)(b) at the threshold of the door. PO Mallilo asked § 87(2)(b) if he lived on the first floor, and § 87(2)(b) said he did not. § 87(2)(b) attempted to close the front door on PO Mallilo, slamming the door on PO Mallilo's foot (**Allegation A**). After the neighbor stated that no one was supposed to be in that first-floor apartment, Sgt. Badillo ordered PO Mallilo to arrest § 87(2)(b). PO Mallilo allegedly punched § 87(2)(b) in the ribs during the struggle to apprehend him (**Allegation B**).

During the arrest, § 87(2)(b) came down the stairs to inform the officers that § 87(2)(b) was his son and lived there; Sgt. Badillo told § 87(2)(b) that § 87(2)(b) could have avoided being arrested by saying he lived there, but he got belligerent and violent. § 87(2)(b) was subsequently charged with criminal trespass, OGA, and resisting arrest. As Sgt. Badillo made no attempt to verify if § 87(2)(b) indeed lived there and had permission and authority to be on the first floor, an allegation of improper arrest is pleaded (**Allegation C**).

Civilian Testimony

§ 87(2)(b) was interviewed at the CCRB on December 23, 2014 (encl. 5a-d).

- At the time of the incident, § 87(2)(b) was checking on water damage to the back door of the first floor with his flashlight, as there was no power in the vacant unit. He observed a uniformed officer later identified as PO Paul Mallilo shining a flashlight at him through the window and beckoning him to come forward. § 87(2)(b) went to the vestibule and opened the door; PO Mallilo asked, "Do you live here on the first floor?" § 87(2)(b) said he did not. PO Mallilo did not respond, and instead kept asking further questions about who lived in the house; § 87(2)(b) said that his parents lived upstairs, and that PO Mallilo could not come in without a warrant. PO Mallilo then radioed for additional units. § 87(2)(b) stepped outside and shouted upstairs for his mother to come down, as the bell did not work.
- § 87(2)(b) twice tried to close the door, but PO Mallilo put his foot into the doorway to prevent this and said, "I'm investigating the crime." § 87(2)(b) began to descend the stairs, and as he did so, PO Mallilo pushed the door open fully and "pinned" § 87(2)(b) to the hallway wall immediately right of the front door. § 87(2)(b) tried to escape to the outside, and at this point, officers identified as PO Antoine Gilkes and Sgt. Abraham Badillo entered the house as well. Sgt. Badillo spoke to § 87(2)(b) while § 87(2)(b) asked why he was being detained; § 87(2)(b) did not hear what he said.
- Sgt. Badillo told the officers to "cuff him" and the officers attempted to place § 87(2)(b) in handcuffs. § 87(2)(b) held his hands at his sides and stiffened him, but did not punch the officers. PO Mallilo punched § 87(2)(b) once in the left side of his ribs with a closed fist. § 87(2)(b) was not injured and did not request medical treatment in regards to this blow. An officer that § 87(2)(b) could not identify shouted, "Stop

resisting.” § 87(2)(b) voluntarily gave up and allowed himself to be handcuffed as he did not want to upset his parents. The officers walked § 87(2)(b) out of the house and placed him in the RMP, while Sgt. Badillo spoke to § 87(2)(b) on the stoop.

§ 87(2)(b) was interviewed at the CCRB on December 23, 2014, and provided a further statement on February 27, 2015 (encl. 6a-b).

- § 87(2)(b) stated that § 87(2)(b) is owned by his wife § 87(2)(b) § 87(2)(b) s brother § 87(2)(b) and § 87(2)(b) § 87(2)(b) business partner § 87(2)(b) § 87(2)(b) § 87(2)(b) is deceased and her ownership of the house has since devolved to her son and daughter.
- § 87(2)(b) was sitting in his living room when he heard § 87(2)(b) shout something incomprehensible from outside. § 87(2)(b) walked downstairs, and observed § 87(2)(b) trying to hold the front door closed while another person tried to gain entry. All of a sudden the door burst open, and three uniformed officers (Sgt. Badillo, PO Mallilo, PO Gilkes) gained entry, pushed § 87(2)(b) against the wall, and tried to put him in handcuffs. § 87(2)(b) told Sgt. Badillo that § 87(2)(b) was his son and lived in that house.
- PO Mallilo and PO Gilkes tried to pull § 87(2)(b) s hands behind his back to handcuff him, and PO Mallilo punched § 87(2)(b) once in the left side of his body with a closed fist. § 87(2)(b) further added that Sgt. Badillo wrapped his arms around § 87(2)(b) s neck from behind and choked him. After three to five minutes of struggling, § 87(2)(b) allowed himself to be cuffed. PO Mallilo and PO Gilkes walked § 87(2)(b) outside, while § 87(2)(b) spoke to Sgt. Badillo. Sgt. Badillo explained they had seen a flashlight on the first floor and thought it was a burglar. They had knocked on the door and rang the bell to no success. When § 87(2)(b) came down, he became agitated and attacked Sgt. Badillo. § 87(2)(b) denied that § 87(2)(b) threw any punches or attacked any officer.
- Officers never asked § 87(2)(b) any questions, or asked him to prove that he or § 87(2)(b) lived in that house. Later, § 87(2)(b) walked to the stationhouse to find out how he could file a complaint against the police, and also brought mail with § 87(2)(b) s name to prove that he lived there. There he saw Sgt. Badillo at the stationhouse, who showed § 87(2)(b) red bruises on his left eyebrow and left cheek that he said were from § 87(2)(b) hitting him. The officers had no interest in looking at the mail and made no note of it.

Inago and § 87(2)(b) provided a phone statement to the CCRB on February 18, 2015 (encl. IA #52 digital case file).

- On the incident date, two officers identified as Sgt. Badillo and PO Gilkes came to their front door and asked if anyone lived on the first floor of the house next door (§ 87(2)(b) § 87(2)(b) replied no, and stated that the first-floor unit there had been vacant for a long time, “at least two years.” The officers then asked permission to go in their backyard, and § 87(2)(b) and § 87(2)(b) granted this. Shortly after, the officers left and § 87(2)(b) heard commotion from next door, but did not see anything or specifically hear any conversation or statements.

Officer Testimony

PO Paul Mallilo was interviewed at the CCRB on January 8, 2015 (encl. 7k-l).

- In his memo book (encl. 7i-j), PO Mallilo indicated that he observed a flashlight in the first floor of § 87(2)(b) and a neighbor at § 87(2)(b) stated that the first floor is

vacant. PO Mallilo gained entry and asked the defendant “Do you live here” and defendant replied “No I don’t.” Defendant refused to provide identification or answer questions, and Sgt. Badillo was injured in his apprehension.

- PO Mallilo described observing a man later identified as § 87(2)(b) with a flashlight rifling through boxes on the floor of what appeared to be a vacant or abandoned apartment. PO Mallilo waited on the stoop while Sgt. Badillo and PO Gilkes spoke to the neighbors (the § 87(2)(b) family) and overheard the conversation in which § 87(2)(b) stated that that apartment was vacant.
- PO Mallilo shone his flashlight inside, and eventually § 87(2)(b) came to the front door. PO Mallilo put both his feet on the threshold of the door, as § 87(2)(b) was a burglary suspect and possibly armed, and was acting agitated and evasive. PO Mallilo asked § 87(2)(b) if he lived in that house. § 87(2)(b) simply said no. PO Mallilo further asked where he lived, and if he had identification to show where he lived. § 87(2)(b) replied “no” to every question. PO Mallilo called over his radio for Sgt. Badillo and PO Gilkes to return to the front. § 87(2)(b) never said he lived at the location, or his family did, and never called for his family to come down.
- § 87(2)(b) backed up and slammed the door onto PO Mallilo’s foot, and PO Mallilo then grabbed his arm; this was the first contact made between the two. They struggled for about 20 seconds, with § 87(2)(b) attempting to close the door onto PO Mallilo, and PO Mallilo holding onto § 87(2)(b)’s arms. Sgt. Badillo quickly came to the front and joined the struggle in the doorway. Sgt. Badillo grabbed § 87(2)(b)’s right arm and PO Mallilo grabbed his left. § 87(2)(b) swung his arms, and elbowed Sgt. Badillo in the face. PO Gilkes now joined the struggle, and a man later identified as § 87(2)(b) came down from upstairs. After one or two minutes, § 87(2)(b) relented and was handcuffed.
- Sgt. Badillo spoke to § 87(2)(b) but PO Mallilo did not know what the conversation was about. No person ever claimed that § 87(2)(b) lived at that location. PO Mallilo did not punch or strike § 87(2)(b) on any part of his body, and his resistance was overcome solely by pulling his hands behind his back. At the stationhouse, § 87(2)(b) arrived to speak to the officers and see what was going on. PO Mallilo asked § 87(2)(b) who § 87(2)(b) was to him, and § 87(2)(b) said he was his uncle. Upon speaking to § 87(2)(b) PO Mallilo was informed that he was § 87(2)(b)’s father. § 87(2)(b) also claimed to have owned § 87(2)(b). PO Mallilo ran a database search in ARCIS, and observed that the owner of § 87(2)(b) was listed as “§ 87(2)(b).” At this point, PO Mallilo charged § 87(2)(b) with criminal trespass.

Sgt. Abraham Badillo was interviewed at the CCRB on January 22, 2015 (encl. 8c-d).

- In his memo book (encl. 8b), Sgt. Badillo indicated that he observed a flashlight in the vacant first floor of § 87(2)(b) and a neighbor at § 87(2)(b) stated that the first floor is vacant. § 87(2)(b) was arrested after entry was gained.
- Sgt. Badillo’s statement was generally consistent with PO Mallilo’s. He added that the first-floor apartment looked in total disarray as if it were abandoned, and that the officers spent five to ten minutes buzzing the bells and knocking on the windows and door, but no person responded. Sgt. Badillo contacted and spoke to § 87(2)(b) who stated that the first-floor apartment of § 87(2)(b) had been vacant for quite some time, and no one was supposed to be living there. Sgt. Badillo and PO Gilkes went through the § 87(2)(b)’s apartment, while PO Mallilo stood in front of § 87(2)(b). Shortly

after, Sgt. Badillo heard a male voice scream, and he ran out back towards § 87(2)(b)

- Sgt. Badillo then observed a man later identified as § 87(2)(b) in the threshold of the front door, screaming at PO Malillo from about a foot away “You can’t come in here.” Both PO Malillo and § 87(2)(b) were in the vestibule of § 87(2)(b) and § 87(2)(b) was angry and aggressive. Sgt. Badillo asked, “Does this guy live here?” PO Malillo responded that § 87(2)(b) did not live there. Sgt. Badillo ordered PO Malillo to arrest § 87(2)(b) made no statements about who lived in house, and did not say anything about his father living there.
- § 87(2)(b) verbally refused to put his hands behind his back, and struck out with his elbows and hands hitting Sgt. Badillo on the right bicep and right side of his face. § 87(2)(b) was cuffed standing up, and no further force was used against him other than pulling his arms. Sgt. Badillo did not recall if PO Malillo punched § 87(2)(b) in the ribs, and denied that he himself punched § 87(2)(b) in ribs. At some point, a man identified later as § 87(2)(b) came down. Sgt. Badillo did not know exactly when § 87(2)(b) came down, but when the cuffs were on § 87(2)(b) then Sgt. Badillo noticed § 87(2)(b) was there. Sgt. Badillo had not noticed § 87(2)(b) before, as the primary focus was on § 87(2)(b) as he had continued resisting after being handcuffed. § 87(2)(b) said that § 87(2)(b) lived there on the second floor, and that he was the father. Sgt. Badillo said that § 87(2)(b) refused to give information, and stated he did not live here. Sgt. Badillo said that if § 87(2)(b) had just answered questions he would not have been arrested, but he had to get loud and aggressive.
- Sgt. Badillo clarified that his original intent upon observing § 87(2)(b) screaming at PO Malillo and denying him entry was to arrest him for OGA no matter what, as he was interfering with PO Malillo’s investigation. When back in the stationhouse, Sgt. Badillo recalled that § 87(2)(b) stated his family owned the house; Sgt. Badillo stated that this did not matter, because he would be under arrest anyway.

PO Antoine Gilkes was interviewed at the CCRB on January 23, 2015 (encl. 9b-c).

- PO Gilkes’ statement was essentially consistent with his colleagues’ testimony.
- When PO Gilkes ran from § 87(2)(b) to assist his partners, he observed PO Malillo and Sgt. Badillo trying to restrain a male later identified as § 87(2)(b) in the threshold of the entrance, and a male later identified as § 87(2)(b) standing in the vestibule as well. § 87(2)(b) was swinging his arms at the officers; PO Gilkes did not see him strike Sgt. Badillo, but found out later that Sgt. Badillo had indeed been injured. No officer punched § 87(2)(b) and § 87(2)(b) made no complaint of being punched.
- After § 87(2)(b) was successfully handcuffed, the officers tried to explain the situation to § 87(2)(b). Neither civilian made any statements about § 87(2)(b) living at that location.

Mediation, Civil and Criminal Histories

- § 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

- § 87(2)(b)
- A FOIL request was sent to the Office of the Comptroller on February 18, 2015 seeking any notice of claim filed in regards to this particular complaint (encl. 13a).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by both § 87(2)(b) and § 87(2)(b) with the CCRB (encl. 2b).
- PO Mallilo has had no substantiated allegations filed against him in his four-year tenure (encl. 2a).
- Sgt. Badillo has had four substantiated allegations filed against him in his ten-year tenure (encl. 2c).
 - In CCRB case 201307413 allegations of stop, frisk, and search of person were substantiated against Sgt. Badillo, resulting in charges.
 - In CCRB case 2013 07815 an allegation of search of person was substantiated against Sgt. Badillo, resulting in charges.

Finding and Recommendations

Recommendations

Allegation A—Abuse of Authority: PO Paul Mallilo entered § 87(2)(b) in Brooklyn.

It is undisputed that § 87(2)(b) was observed walking around the vacant apartment on the first floor of § 87(2)(b) with a flashlight. Officers were informed by the neighboring family, the Leobardos, that this apartment was vacant for several years and “no one was supposed to be there.” It is undisputed that PO Mallilo made contact with § 87(2)(b) at the threshold of the door and asked if he lived there (interpreted by § 87(2)(b) to be inquiring about the first floor, by the officers as meaning the entire building); § 87(2)(b) said he did not. At this point, § 87(2)(b) attempted to close the door, and PO Mallilo conducted an entry by placing his foot in the threshold to block the door from being closed and then entering the location.

Though PO Mallilo had no warrant, case law has long held that warrantless entries can be justified by exigent circumstances, among these including a clear showing of probable cause to believe the suspect committed the crime, strong reason to believe that the suspect is in the premises being entered, and a likelihood that the suspect will escape if not swiftly apprehended *PD v. Grogan*, No. 75053/99 (2000) (encl. 1a-h); *People v. McBride*, NY Slip Op 3473; 14 N.Y.3d 440 (2010) (encl. 1j-p).

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B—Force: PO Paul Mallilo used physical force against § 87(2)(b)

It is undisputed that when officers attempted to apprehend § 87(2)(b) he tightened his body up and refused to be handcuffed. § 87(2)(b) alleged that as he resisted the three officers, PO Mallilo struck him one time in the left side of his ribs with a closed fist. § 87(2)(b) relented and allowed himself to be handcuffed shortly after.

§ 87(2)(b) did not allege that he was injured or physically marked by this punch, nor was he ever treated for any injury consequent to the punch.

§ 87(2)(b), § 87(2)(g)

All officers' testimony denied or did not recall PO Mallilo using such force against § 87(2)(b). Officers alleged that § 87(2)(b) swung his arms and attempted to slap and hit officers, elbowing Sgt. Badillo in the face causing injury; § 87(2)(b) corroborated seeing bruises on Sgt. Badillo's face.

§ 87(2)(b), § 87(2)(g)

Allegation C—Abuse of Authority: Sgt. Abraham Badillo authorized the arrest of § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). It is undisputed that immediately prior to or during PO Mallilo's entry, § 87(2)(b) came downstairs, and spoke to Sgt. Badillo to explain that § 87(2)(b) was his son and lived in that house.

Sgt. Badillo acknowledged and § 87(2)(b) generally corroborated that Sgt. Badillo told § 87(2)(b) that § 87(2)(b) could have avoided arrest by answering questions and saying he lived on the second floor, but he "had to get belligerent and violent."

Penal law section §195.05 indicates that a person is guilty of obstruction governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or prevents a public servant from performing an official function by means of intimidation, physical force, or interference (encl. 1q).

Both § 87(2)(b) and § 87(2)(b) informed officers that the house was owned by their family and that § 87(2)(b) lived there. § 87(2)(b) stated that the house is jointly owned by his brother-in-law § 87(2)(b) and a business partner § 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Reviewer: _____
 Title/Signature Print Date